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6 Attorneys for Defendants
CITY OF OAKLAND, et al.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 DEMETRIUS L. HARVEY,

11 Plaintiff,

12 v.

13 CITY OF OAKLAND, a municipal
14 Corporation; OAKLAND POLICE
DEPARTMENT; WAYNE TUCKER, Chief,
15 Oakland Police Department; DEPUTY
CHIEF HOWARD JORDAN,
16 OAKLAND POLICE LIEUTENANT GIER,
OAKLAND POLICE LIEUTENANT
17 WHITMAN, OAKLAND POLICE OFFICER
DOMINIQUE AROTZARENA,
18 OAKLAND POLICE OFFICER J. MORRIS,
OAKLAND POLICE OFFICER MUSCHI,
19 OAKLAND POLICE OFFICER GUTIERREZ,
In their official and individual capacities,
20 Does 1 through 50, inclusive.

21 Defendants.
22

CASE NO. C07-01681

NOTICE OF MOTIONS AND MOTION
TO DISMISS AND MOTION FOR MORE
DEFINITE STATEMENT

[F.R.C.P. 12b(6), 12(e)]

Date: July 10, 2007

Time: 9:30 a.m.

Dept: Courtroom 11, 19th floor

The Honorable Martin J. Jenkins

23
24 **TO PLAINTIFF IN PRO PER:**

25 **PLEASE TAKE NOTICE** that on **July 10, 2007, at 9:30 a.m.** or as soon as the
26

1 matter may be heard in Courtroom 11 of the above captioned Court, located at 450
 2 Golden Gate Avenue, in San Francisco, CA, Defendants CITY OF OAKLAND, CHIEF
 3 WAYNE TUCKER, DEPUTY CHIEF HOWARD JORDAN, OAKLAND POLICE
 4 LIEUTENANT GIER, OAKLAND POLICE LIEUTENANT WHITMAN, OAKLAND POLICE
 5 OFFICER DOMINIQUE AROTZARENA, OAKLAND POLICE OFFICER J. MORRIS,
 6 OAKLAND POLICE OFFICER MUSCHI, OAKLAND POLICE OFFICER GUTIERREZ
 7 (“City Defendants”) will and hereby do move the Court for an order, (1) pursuant to
 8 Federal Rule of Civil Procedure 12(b)(6), dismissing certain causes of action in this case
 9 for failure to state a claim as a matter of law, and (2) pursuant to Federal Rule of Civil
 10 Procedure 12(e), directing plaintiff to provide a more definite statement in his complaint.
 11
 12

13 The motion to dismiss is made on the grounds that as to each of the causes of
 14 action in plaintiff’s complaint, plaintiff has failed to state a claim for which relief can be
 15 granted. More specifically, the motion is based on the following grounds:

- 16 1. Plaintiff’s 42 U.S. §1983 claim for violation of due process (first cause of
 17 action) fails as to the “strip search” claim because the allegations concern
 18 three county jails, not the City of Oakland’s municipal custom or practice;
 19
- 20 2. The fifth and sixth causes of action under the California Constitution are
 21 barred under California law prohibiting private actions for damages under
 22 said sections of the California Constitution; and
- 23 3. The California tort law claims (Second, Third and Fourth causes of action)
 24 do not allege a statutory basis for liability against the City of Oakland.
 25

26 The motion for a more definite statement under Rule 12(e) is made on the grounds

1 that the general allegations of fact do not identify which of eight named individuals
2 committed the alleged acts and, more importantly, the Causes of Action do not identify to
3 which of several defendants each is directed.

4 This motion is based on this Notice, the accompanying memorandum of points and
5 authorities, the complete files of this case, and any evidence or argument the Court may
6 entertain at the hearing of this matter.
7

8
9 Dated June 4, 2007

10
11 JOHN A. RUSSO, City Attorney
12 RANDOLPH W. HALL, Assistant City Attorney
13 RACHEL WAGNER, Supervising Trial Attorney

14 By: s/s
15 Attorneys for Defendants
16 CITY OF OAKLAND, et al.
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PROOF OF SERVICE
Harvey vs. City of Oakland
Case No. C07-01681 MJJ

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One City Hall Plaza, 6th Floor, Oakland, California 94612. On date shown below, I served the within documents:

NOTICE OF MOTION TO DISMISS AND MOTION FOR MORE DEFINITE STATEMENT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- ☐ by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing such envelope to be sent by Federal Express/Express Mail

Demetrius L. Harvey
360 So. Helm Avenue
Fresno, CA 93727
Telephone: 559-255-1971

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct in accordance with 28 U.S.C. § 1746.

Executed on June 4, 2007, at Oakland, California.

s/s _____
 Deborah Walther